

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL MACALUSO
122 Slaymaker Road
Milford, PA 18337

Plaintiff

v.

APPLE INC.
1 Infinite Loop
MS:38-3TX
Cupertino, CA 95014

Defendant

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Apple Inc. (“Apple”), by and through its attorneys, hereby removes the above-captioned action, pending as Case ID 210201562 in the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division, to the United States District Court for the Eastern District of Pennsylvania. In support of removal, Apple states as follows:

PROCEDURAL BACKGROUND

1. On or about February 17, 2021, Plaintiff Michael Macaluso commenced the Court of Common Pleas action by filing a Complaint in the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division. The matter was assigned the Case ID 210201562.

2. Apple was served with the Complaint on March 2, 2021.

3. Pursuant to 28 U.S.C. § 1446(b)(1), the Complaint is “the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

4. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and other orders that have been served upon Apple to date—the Complaint, the Civil Cover Sheet, and the Notice to Defend—are attached hereto as Exhibit A.

5. The Complaint alleges that “a fire erupted” at 122 Slaymaker Road, Milford, PA 18337 “as a direct result of an event internal to the electrical/battery system” or “one or more defects and/or malfunction [sic]” in an iPad on March 2, 2020. *See* Ex. A (Complaint).

6. This Court has jurisdiction over this action under 28 U.S.C. § 1332, *et seq.*

7. Apple is filing this Notice of Removal within thirty days of service of the Complaint in the Court of Common Pleas action. *See* 28 U.S.C. § 1446(b)(1).

8. One year has not expired since the commencement of the Court of Common Pleas action.

9. Venue is proper in this Court as the Court of Common Pleas, First Judicial District of Pennsylvania, where the Court of Common Pleas action was originally filed, is in the Eastern Division of this District. *See* 28 U.S.C. §§ 100(2), 1446(a).

10. Pursuant to 28 U.S.C. § 1446(d), Apple is serving a copy of this Notice of Removal on all parties through their counsel of record. Notice of the filing of this Notice of Removal will be filed with the Clerk of the Court of Common Pleas, First Judicial District of Pennsylvania, and served on all parties to the Court of Common Pleas, First Judicial District of Pennsylvania action.

DIVERSITY OF CITIZENSHIP

11. The diversity of citizenship requirement under 28 U.S.C. § 1332(a) is met.

12. Per the Complaint, Plaintiff Michael Macaluso is a resident of Pennsylvania, with an address of 122 Slaymaker Road, Milford, PA 18337. *See* Ex. A (Complaint). Upon information and belief, Michael Macaluso is a citizen of the Commonwealth of Pennsylvania.

13. Apple is now, and was at the time of commencement of the Court of Common Pleas action, an entity incorporated under the laws of California with its principal place of business in the State of California. *See* 28 U.S.C. § 1332. Accordingly, Apple is a citizen of the State of California.

14. As the parties are citizens of different states, diversity of citizenship exists under 28 U.S.C. § 1332.

15. Apple is the only named defendant in the Court of Common Pleas action. As such, all defendants appearing in the action consent to removal as required under 28 U.S.C. § 1446(b)(2)(A) and the forum-defendant rule (28 U.S.C. § 1441(b)(2)) does not prevent removal of this action.

AMOUNT IN CONTROVERSY

16. The amount in controversy requirement under 28 U.S.C. § 1332(a) is also met.

17. As set forth in a written demand exchanged by Plaintiff prior to filing the Court of Common Pleas action, the alleged damages meet the amount in controversy requirements.^[1] The demand letter dated September 10, 2020 is attached hereto as Exhibit B.

18. This amount is confirmed in the Civil Cover Sheet and Complaint wherein Plaintiff alleges damages in excess of \$50,000. *See* Ex. A (Complaint).

19. Accordingly, the action is removable pursuant to 28 U.S.C. § 1332.


^[1] In making its good faith calculations of the amounts being sought by the Complaint, Apple does not concede or admit in any fashion that any claims for such amounts, or any amounts, have legal or factual merit, and reserves all rights and defenses to such claims.

20. Apple reserves the right to amend or supplement this Notice of Removal and to assert any and all defenses and objections.

WHEREFORE, Defendant Apple Inc. effects the removal of the action in Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division, to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

Dated: March 22, 2021



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